

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PHILIP YATES,

Plaintiff,

No. 08-CV-6346 CJS

-vs-

DECISION AND ORDER

A. CUNNINGHAM, et al.,

Defendants.

INTRODUCTION

Now before the Court are Plaintiff's Objections (Docket Nos. [#160] & [#162]) to a combined Report & Recommendation and Decision and Order [#158] of the Honorable Marian W. Payson, United States Magistrate Judge. Plaintiff's objections are denied.

BACKGROUND

The background facts of this action are detailed in prior rulings of this Court, and need not be repeated here. It is sufficient to note that Plaintiff, proceeding *pro se*, is suing members of the Yates County Sheriff's Department and the Penn Yan Police Department pursuant to 42 U.S.C. § 1983, for alleged constitutional violations arising from a traffic stop and DWI arrest on February 5, 2006. See, Second Amended Complaint [#18].

Plaintiff filed motions to compel responses to three interrogatories, as well as to amend and supplement his complaint. (Docket Nos. [#90], [#101] & [#141]). Plaintiff also filed a motion entitled "Motion for Fine Revocation or Modification." (Docket No. [#152]). Magistrate Judge Payson denied the motions to compel and the motion for "fine revocation/modification," and recommended that this Court deny the motions to amend and supplement the Complaint. With regard to the motion to amend/supplement, Judge

Payson indicated, in pertinent part, that the application was filed more than a year after her Scheduling Order's [#40] deadline for making amendments, without a showing of good cause. As for the motion to compel, Judge Payson found that one of the subject interrogatories had already been answered, and that the others had never been served on Defendants. Lastly, Judge Payson determined that the "Application for Fine Revocation or Modification" had mistakenly been filed in this Court, instead of Yates County Court.

On September 13, 2012, Plaintiff filed the subject Objections [#160]. These objections consist largely of statements about matters that have nothing to do with Magistrate Judge Payson's rulings. Plaintiff indicates, though, that he exhausted his administrative remedies as to the claim that he seeks to add to the complaint, but does not address the issue of good cause for his delay in bringing the motion to amend. Additionally, he indicates that the failure to serve interrogatories is the fault of a paralegal that he hired to assist him. On September 17, 2012, Plaintiff filed an amendment to his Objections [#162], in which he seems to now claim that he actually served the interrogatories. On September 19, 2012, Defendants filed a response [#161] to the Objections.

ANALYSIS

Pursuant to Rule 72(a) of the Federal Rules of Civil Procedure and Title 28 U.S.C. § 636(b)(1)(A), this Court may review non-dispositive matters previously decided by a magistrate judge and set them aside if they are clearly erroneous or contrary to law. FED. R. CIV. P. 72(a); 28 U.S.C. § 636(b)(1)(A) (2002). A finding is clearly erroneous if, "although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *United States v.*

U.S. Gypsum Co., 333 U.S. 364, 395 (1948).

On the other hand, where a Magistrate Judge has issued a Report and Recommendation concerning a motion that is dispositive of a claim, this Court “must determine *de novo* any part of the magistrate judge’s disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.” FRCP 72(b)(3); *see also*, 28 U.S.C. § 636(b)(1)(C).

With regard to the motion to amend/supplement, the Court has reviewed the issue *de novo*, and finds that the application(s) was properly denied, since it was untimely and since Plaintiff has not shown good cause for his failure to comply with the Court’s scheduling order. As for Plaintiff’s objections to the non-dispositive discovery-related rulings, he has not met the difficult burden of showing that Magistrate Judge Payson’s rulings were clearly erroneous or contrary to law.

CONCLUSION

For the reasons discussed above, Plaintiff’s Objections [#160][#162]] are denied, and the Decision and Order/Report & Recommendation [#158] is affirmed and adopted in all respects.

So Ordered.

Dated: Rochester, New York
September 25, 2012

ENTER:

/s/ Charles J. Siragusa
CHARLES J. SIRAGUSA
United States District Judge